

A

REVIEW OF THE STATE OF THE BRITISH NATION.

Thursday, May 13. 1708.

I Am directing this Paper to the Gentlemen who are in Custody, upon Suspicion of ill Practices with the French, and, particularly to those who in their Behalf make much louder Complaints, than the Gentlemen do themselves.

And first as to the Gentlemen themselves, as they are all Persons of Distinction, some of them of the first Quality, and some whom I have the Honour particularly to be known to, it cannot be expected, I should treat them according to our common Method of hard Words, neither would I do so, if they had none of the Circumstances abovenam'd on their side; as they are Prisoners, as they are in the Hands of Justice, as they are Men in Trouble, it would be ungenuine to insult them, it would want Christiani-

anity, and it would want Manners, in both which I desire to make no Breach.

Be it, that the Jacobites, as a Party, would have shown us no Favour; be it, that it is the common Method to trample on them that are down; be it, that the Design, they are suspected about, was barbarous, had in it a Complication of Mischiefs to their Country, and is in it self, to me at least, execrable and to be abhor'd.

But hold, Gentlemen, I am upon Terms of Justice; no Man is in the Terms of the Law a Criminal, till he has had a Trial, and stands convicted; and Suspicions give me no Authority to censure—Wherefore, as I have already alledg'd, the Government has had good Reason to secure them, in orde

order to a Trial; so till that Trial, I cannot fairly discourse of them, but as Innocent.

Having thus stated their Case therefore, I shall henceforward treat them as Persons only under the Jealousie of their Government; Persons who have by some way or other, *no matter here by what way*, given the Government Reason to suspect their Conduct, as tending towards assisting the Enemy in their late Attempt upon this Island, to find out who are or are not Guilty, to bring the Guilty, if possible, to Justice; and withal to prevent the Disaffection of any they suspect as aforesaid, being an Encouragement to future Attempts, the Government has thought fit to take these Gentlemen into Custody, as by an Act of Parliament made this last Session of Parliament, her Majesty is empower'd to do—Thus there is *1st.* the Reason of it, *and 2dly.* the Legallity of it made out; as to the Expediency of it the Government is Judge of that, and it admits no Dispute.

Now, supposing these Gentlemen, tho' justly suspected, yet innocent of the Charge, and entirely clear of the treasonable Practices we talk of, for 'tis on these Terms only that I shall speak of them: In this Case, I say it is, they have great Cause to thank GOD for the Union, whether they think fit to do so or no, is not to my Purpose; but I say, they have great Reason to do it, and in the next Place as I hinted in my last, they have abundant Cause to be satisfy'd with the Directions given by the Government for their being brought to London.

I have nothing to say to the Circumstances of particular Persons, as to their Families or Affairs, the Expence or the Fatigue of Travelling, I am speaking with Relation to the Equity of Proceedings in Criminal Cases, the Difficulty of Evidence, the Justice of our Law in trying *Per Pares*, and the Priviledge of Peirage, Things which before the Union they had no Recourse to; if any Man will in a Case like this set the Hazard or Expence of their Journey agaist the Safety of their Persons, that is nothing in the Case.

Nor do I reflect on the Justice of Scotland, in saying the Peers of Britain are not so easily and lightly convicted, as they were

there; former Times may be a convincing Proof of this, in the Case of the Earl of Argyle on one hand, and the Lord Delamere on the other; the former in Scotland was voted guilty of High-Treason on the most trivial Affair imaginable, viz. offering an Explanation to the Oath of Allegiance; the latter was acquitted in open Court, the King present, after all the Endeavours the Court-Party had made use of to entrap him, and yet for a Fact, which it was well known, his Lordship was concern'd enough in, and that no Industry or Malice was wanting to destroy him.

And here by the Way it is worth noting, that a Nobleman of Scotland was adjudg'd Guilty of High-Treason for refusing an Oath without an Explication.

— While at this Day refusing to swear to the Government, is so far from being Criminal in Law, that in Defiance of the Government, those that receive the Protection of the Government, refuse their Allegiance to the Government, and value themselves upon it; this may serve to shew us the Difference between Days of Liberty and Days of Bondage, between rightly constituted, Legally Ruling Governments, and Tyrannical Arbitrary Rulers; but that by the by.

I return to the Case of the present Gentlemen, who, I say, I think, have Cause to give GOD Thanks for the Union; and first for the Noblemen, who by Virtue of this Union have obtain'd a Share of the English Peerage, and the Priviledge of being to be judg'd by the greatest and most illustrious Body of Men in the World; without the Suffrage of these, not a Nobleman of Scotland can be judg'd.

These as they are Men of Birth, Men of Honour and of Estates, so they pledge that Honour in the Judgment they pass, and in a most solemn Manner with their Hands upon their Hearts, *signifying their having duly ponder'd the Case before them*, they One by One pronounce the Person Guilty or Innocent — It is no more, my Lords, in the Power of Arbitrary Councils, Tyrants,

Tyrannical Princes, or partial Judicatures, to hurry you to Gaols and Executions; your Enemies can no more be your Judges, nor can Personal Quarrels be reveng'd in Form of Justice; you will have an open, a full, a fair, and an uninterrupted Hearing; all you can urge in your own Defence will be heard with Patience, weigh'd with Prudence, and judg'd with Truth; Evidences on either side shall have no Discouragements, or be aw'd by the Greatness or Awfulness of Authority, but shall have Room to speak as well to acquit as accuse: In short, *my Lords*, nothing but real Guilt can give you the least Cause to apprehend any thing here; now, *even real Guilt*, unless clearly and legally prov'd, or voluntarily confess'd, shall do you no Injury here; you have all the Ways possible of being deliver'd, and but one Way of being sentenc'd, *viz.* by plain Evidence.

For this Reason, I say, you have Cause to rejoice in the Union, and I make no Question, but many a noble Family in Scotland, as their Circumstances shall in future Time come to appeal to this Bar for Justice, will have Reason to look back on the Union as the Foundation of their Safety, and bless GOD that ever it was made.

From the Whole, also this farther is to be said, that the sending for the Prisoners from Edinburgh and Sterling to London, is, as to

their being try'd, their Safety, not their Hazard, and is what they ought to rejoice in, not be concern'd at, and I perswade my self, they either are or will be all of them pleas'd with it; and the Clamour, that we have rais'd upon that Head, is from such as do not understand the Gentlemen's Interest.

Nay, if I were to suppose them to be Guilty, I should say the same thing; for Guilt it self has the Advantage here, in that it is requir'd to be more plainly prov'd than in other Places, no Inuendoes, Similitudes of Hands, Constructive or Presumptive Treasons will here serve the Turn; it is below such a Court of Justice to stoop to such mean and low Methods for the Ruin of a Prisoner; but if there be *one End of the Staff* better than the other, it is given to the Defendant, that if possible with Satisfaction to Justice he may be acquitted.

I shall reserve the Remainder of this Subject till Time gives an Issue to this Affair, and till the Gentlemen concern'd have pass'd the Rubicon that is before them; when I doubt not, whether they appear Innocent or Guilty, they shall all acknowledge the Honour, Justice and Freedom of their Treatment in England; and then that they obtain'd it by the Union, will be own'd by Consequence.

MISCELLANEA.

I have given due Acknowledgement to his most Christian Majesty, for the abundant Service he has done us in his Caledonian Expedition; I have also done him Justice in acknowledging for him, that this Journeé was not the Fruit of his own most Christian Invention, neither hastily grasp'd at with the first Proposal; but that he was, as I may call it, dragg'd into it by the importunate Violence of *High-Flying* Sollicitations, and has in his Proportion as much Cause to complain of Jacobite Pretences, Misrepresentations, and People that speak long to no Purpose, as other Folks.

But O the Pope, the Pope! why should we forget the Pope, why omit to pay due Honour and Glory to his Holiness, and why should we not do Justice to him, as to his Share in this most useful Expedition, and indeed it is not the first Time his Holiness has very honestly assisted us in our common Illuminations? indeed I must own, the Pope, if his Holiness is not bely'd, has gone beyond his Ordinair in this Case, in the Spanish Invasion, and in the Holy League in France, in the Famous Cruisadoes, Wars with the Infidels, and the like; the Popes in those Times seldom below'd any more than